IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.564 OF 1993

Govind Vithal Patwardhan,
since deceased through his heirs
and legal representatives:

1. Vimal Govind Patwardhan
2. Bhaskar Govind Patwardhan
3. Sou. Anuradha Gopal Tamankar

All residing at 1173, Joshi
Wada, Harbhat Road, Sangli -
416416. .... Petitioners

- Versus -

1. Sumati Shripad Joshi,
age 52, Occ: Service &
Household duties, r/o
1173, Pethbhag, Sangli.

2. Sou. Lata @ Madhuri D.
Mahindargi, Occ: Household
duties, r/o Budhagaon,
Tal: Miraj, Dist: Sangli.

3. Sou. Chitra @ Urmila G.
Ponkshe, age 29, Occ: House-
hold duties

4. Sou. Shaila @ Swapana N.
Ponkshe, age 27, Occ: House-
hold duties, r/o Sangli.

5. Ms Nalini Shripad Joshi,
age 20, Occ: Education,
r/o Sangli.

Respondent Nos.3 to 5 residing at
1173, Pethbhag, Sangli.

6. Prakash Krishna Pawaskar,
age, 35, Occ: business,
r/o C.S. No.377, Sambhare
Road, Gaonbhag, Sangli. .... Respondents

Sarvasri V.S. Gokhale for B.P. Apte

for the Petitioners.

Ms A.R.S. Baxi for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 05, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties. Perused the records.

2. The petitioners challenge the concurrent orders passed by the Courts below decreeing the suit for eviction of the petitioners from the suit premises on the ground of default in payment of rent.

3. Few facts relevant for the decision are that the petitioners are tenants in relation to the suit premises comprising of two rooms situated at City Survey No.1173, Peth Bhag, Harbhat Road, Sangli. The original monthly rent of the suit premises was Rs.41/-. However, the petitioners filed an application for fixation of the standard rent in relation to the suit premises wherein order for interim rent payable by the petitioner came to be passed by the Court on 8-1-1985. Thereafter, on 14-1-1985 the respondents issued a notice to the petitioners which was received by the petitioners on 15-1-1985, demanding rent accordingly for the period

from 1-7-1980 till the date of receipt of the notice. The petitioners, however, did not pay the rent in arrears within one month from the receipt of the notice. However, in the course of time deposited a sum of Rs.1,214/- when in fact the demand was for a period of 54 months. The respondents filed suit for eviction of the petitioners on the ground of default in payment of rent and the same was decreed by the trial Court on 10-12-1986, after hearing the parties. The petitioners preferred appeal against the same which came to be dismissed on 28-8-1992. Hence the present petition.

4. While challenging the impugned judgments and order, the learned Advocate for the petitioners, drawing attention to Section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as "the said Act", submitted that both the Courts below erred in proceeding to consider the matter in terms of the provision of law under Section 12(3)(a) when in the facts and circumstances of the case it was required to have been considered under Section 12(3)(b) of the said Act, and hence the impugned judgments and orders cannot be sustained and the proceedings initiated for the eviction of the petitioners from the suit premises are required to be quashed. The learned Advocate for the respondents, on the other hand, submitted that in the facts and circumstances of the

case, no fault can be found with the impugned orders.

5. There is no dispute that the case is governed by the provisions of law as were in force prior to enforcement of the Bombay Act 61 of 1953 i.e. to say the provisions of law comprised under Section 12(3) as they stood prior to 1987. The relevant provisions read thus:-

> "12(1) ......
>
> 1A ......
>
> (2) ......
>
> (3)(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession.

(b) In any other case, no decree for eviction shall be passed in any such suit, if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due,

(c) and thereafter, -

(i) continues to pay or tender in Court such rent and permitted increases till the suit is finally decided; and

(ii) pays costs of the suit as directed by the Court.

(4) ......

Explanation:- In any case where there is dispute as to the amount of standard rent or permitted increases recoverable under this Act the tenant shall be deemed to be ready and willing to pay such amount if before the expiry of the period of one month after notice referred to in sub-section (2), he makes

> an application to the Court under sub-section (3) of section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the Court."

6. It cannot be disputed that both the Courts below have proceeded to consider the case under Section 12(3)(a) and the same is apparent from the issue No.4 which was framed by the trial Court and the discussions in respect thereof in the judgment of the trial Court as well as the finding arrived at by the lower Appellate Court on the point as to whether the petitioners committed default in payment of rent for more than six months preceding the said notice. The lower Appellate Court has clearly observed that inspite of the notice dated 14-1-1985 demanding the interim standard rent at the rate of Rs.35/- per month was served upon the petitioners on 15-1-1985, the petitioners admittedly did not pay the arrears within one month after receipt of the notice and the records disclose that the petitioners deposited total amount of Rs.1,214/- when in fact the arrears were for a period of 54 months at the time when the demand notice was issued. Apparently therefore, the Courts below considered the matter under Section 12(3)(a) while decreeing the suit for eviction of the petitioners from the suit premises on the ground of

default in payment of rent over a period of six months as well as neglect to pay the arrears within one month after receipt of the notice under sub-section (2) of Section 12 of the said Act.

7. As regards the contention of the learned Advocate for the petitioners that both the Courts erred in considering the matter under Section 12(3)(a) instead of Section 12(3)(b), undisputedly, no such ground was raised either before the trial Court or even before the lower Appellate Court. Such a ground is sought to be raised for the first time in the writ petition. In other words, the petitioners have not led factual foundation to raise such an issue in the matter, nor the specific finding in that regard was invited from the fact finding Court before raising such a ground in the petition.

8. In any case, it is to be noted that irrespective of the fact that the Courts below have considered the case under Section 12(3)(a) and not under Section 12(3)(b), no prejudice can be said to have been caused to the petitioners on that count as the facts on record clearly reveal that even assuming that the case ought to have been considered under Section 12(3)(b), the petitioners could not have been able to satisfy the Court for dismissal of the suit as undisputedly, inspite of the

interim rent having been fixed at the rate of Rs.35/- per month and after passing appropriate order in that regard by the competent Court, a notice demanding rent at the said rate was served upon the petitioners on 15-1-1985 and yet the petitioners had failed to pay the said rent. The provision of law as comprised under Section 12(3) r/w the explanation under Section 12 clearly require that after service of notice upon the tenant under Section 12(2), in case the tenant wants to dispute the amount of rent claimed by the landlord, he has to make an application under Section 11(3) for fixation of the standard rent and once the Court passes an order thereunder fixing the standard rent, it is the obligation of the tenant to pay all the arrears accordingly and to continue to pay the rent at the standard rate fixed by the Court regularly. The sub-section (4) of Section 11 empowers the Court in such proceedings to fix the interim rent and undisputedly in the case in hand interim rent was fixed much prior to the issuance of the notice of demand and, as already seen above, inspite of service of such notice, the petitioners did not pay the rent within one month from the date of receipt of the notice. Once it is not in dispute that the competent Court had fixed the interim standard rent, it cannot be said that there was any dispute as such which could have been raised by the tenant regarding the quantum of rent payable to the

landlord on receipt of the notice under Section 12(2). Merely because the proceedings for fixation of the standard rent instituted by the petitioners were pending at that time and the final order as regards the fixation of standard rent was passed along with the disposal of the eviction proceedings, that cannot enure to the benefit of the petitioners to contend that they were entitled to dispute the claim for arrears in the notice issued by the landlord under Section 12(2) when admittedly such claim in the notice was in accordance with the interim order passed by the competent Court fixing the interim standard rent. In other words, the case was squarely under Section 12(3)(a) as has been rightly considered and decided by the Court below and it did not fall under Section 12(3)(b) as sought to be contended and even otherwise, as already seen above, the petitioners continued to neglect to pay the arrears of rent in terms of the interim standard rent fixed by the competent Court.

9. In the circumstances, therefore, the petitioners had failed to raise the point regarding the case being required to be considered under Section 12(3)(b) and not under Section 12(3)(a) of the said Act and secondly that in the facts and circumstances of the case, it is apparent that it did not fall under the said provision of law as sought to be contended by the petitioners, but

it was correctly considered in terms of the provision of law comprised under Section 12(3)(a). Being so, no case is made out for interference in the impugned judgments and orders in exercise of writ jurisdiction under Article 227 of the Constitution of India. Hence the petition fails and is hereby dismissed. The rule is discharged with no order as to costs.

10. On oral request by the learned Advocate for the petitioners, time to vacate the suit premises is extended till 31-1-2005, subject to submitting undertaking by the petitioners and every major member of the petitioners' family as well as those occupying the premises, to be filed before the Registrar (Judl.) of this Court within three weeks from today assuring that the petitioners shall handover the vacant and peaceful possession of the suit premises to the respondents/landlord on or before 31-1-2005 and shall not induct any third person nor shall create any third party interest in the suit premises.